CH 108

MT LEGISLATIVE HISTORY

Year 1981

Bill # HB 20 Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s)		
	Jan 09	✓C
	Jan 16	✓C
		C
		C
Date Out		C

S. Committee on Judiciary

Hearing Date(s)		
	Mar 09	✓C
		C
		C
		C
Date Out		C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____

Minutes

Report

LC 0040/01

HOUSE BILL NO. 20

INTRODUCED BY GOULD

BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY AND FACILITY NEEDS

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
	Second reading, do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 91; Noes, 7. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 9, 1981	Committee recommend bill be concurred in. Report adopted.
March 10, 1981	Second reading, concurred in.
March 12, 1981	Third reading, concurred in. Ayes, 50; Noes, 0.

IN THE HOUSE

March 13, 1981	Returned from Senate. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 20

INTRODUCED BY GOULD

BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY AND FACILITY NEEDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-18-221, MCA, TO PROVIDE THAT ADDITIONAL SENTENCES FOR CRIMES COMMITTED WITH A DANGEROUS WEAPON ARE TO RUN CONSECUTIVELY WITH THE SENTENCE PROVIDED FOR THE OFFENSE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-221, MCA, is amended to read:

"46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively with the sentence provided for the offense."

-End-

HB20

STATUS SHEET

JUDICIARY COMMITTEE

47 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
12	To provide for increased punishment of persons who have been convicted of three separate felonies.	1/07/81	Gould	1/09/81	Tabled 1/16/81 Do Pass as Amended 2/19/81	2/19/81
20	To provide that additional sentences for crimes committed with a dangerous weapon are to run consecutively.	1/07/81	Gould	1/09/81	Tabled 1/16/81	
44	Prohibit final disposition of deceased person until 2 day attempt to notify next of kin or other responsible party.	1/07/81	Brand	1/12/81	Do Not Pass 1/12/81	1/12/81
68	To repeal the Montana conciliation law. Sections 40-3-101 through 40-3-127 MCA.	1/07/81	Pistoria	1/12/81	Do Not Pass 1/12/81	1/12/81
71	An act to revise the open meeting law. Amending sections 2-3-203, 2-3-212, and 2-3-313 MCA.	1/07/81	Keedy	1/12/81	Tabled 1/16/81 Brought off table 2/17/81 Do Pass as Amen. 2/22/81	2/23/81
93	Provide interest for damage resulting from injury etc., and computing the interest from the date of the injury.	1/07/81	Bennett	1/14/81	Do Pass as Amended 1/15/81	1/15/81

Form CS-32

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 9, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser presiding. All committee members were present. Jim Lear, attorney of the Legislative Council, was also present.

HOUSE BILL 12 REP. GOULD, chief sponsor of the bill, stated this bill, if passed, would have relatively small effect on prison population. If there was a persistant felony offender, it would make that offender aware he/she would receive a mandatory sentence of a minimum of ten years. This would not jeopardize the person who at a young age had a few problems of one or two felony convictions and then had gone straight for a number of years to suddenly commit another felony. This bill would be strictly for the persistant felony offender.

CURT CHISHOLM, Department of Institutions, did not feel there would be any significant impact on the prison population should this bill be passed. CHISHOLM did not anticipate any major fiscal implementations on the prison. The persistant felony offender must be dealt with and he was in favor of this bill.

There were no other proponents.

There were no opponents.

No questions were asked by committee members.

HOUSE BILL 20 REP. GOULD stated that in 1977 the legislature passed a bill, signed by the Governor, which gave from a two to ten year sentence for a first conviction and a four to twenty year sentence for a second offense, for using a fire arm when committing a felony. This bill makes sure that a sentence is a consecutive and not a concurrent sentence. REP. GOULD implied we should control the criminal and not the gun.

CURT CHISHOLM, Department of Institutions, noted this bill would provide for additional sentences and judges would have certain rules to follow in sentencing a convicted person. There would be no fiscal impact on the prisons or the Department of Institutions of a great demand.

There were no other proponents.

There were no opponents.

CHAIRMAN KEYSER stated all the bills concerning criminal sentencing would be assigned to a sub-committee for research and recommendation

REP. SEIFERT inquired if there would be a problem with the type of weapons used. REP. GOULD stated there would be no problem but a clarification could be made in the bill.

No further questions were asked by committee members.

HOUSE BILL 10 REP. GOULD spoke on behalf of House Bill 10. The main point to consider is if a person robs a store at gun point and steals $200 in one town; and another person steals $200 from another store at gun point in a different town, those two people should be convicted of the same crime with the same punishment. Fifty percent of the inmates in prison want this type of bill passed. Many inmates feel they received a sentence that was not equal to the crime committed. REP. GOULD feels this is a good bill and well thought out.

REP. KEEDY, sponsor of the bill, expressed the bill does require three main things: (1) the crime itself; (2) any circumstances aggrevating the defendant; and, (3) the personal criminal history of the person. If a sentence cannot be deferred, a fixed sentence should be given. A sentence should not vary from one judge to another. Men and women should not be convicted for the types of people they are but for the crime that they performed.

REP. KEEDY further stated that a person is sentenced for what he did to society and not what he might do. Prisons are for punishment and not necessarily for rehabiliation.

Inmates currently do not have faith in the judicial system. If a bill of this type were passed, it would help restore their faith in the system knowing that everyone will be treated equally and fairly. There is no guarantee we can adequately change the crime rate; but implementation of this bill would help to control the crime rate.

This bill will undoubtedly have the opposition of the people in the community and the judges around the State.

Proponents

D. W. STEWART, representing himself, made his feelings known to the committee. He expressed that he was angry as he watched people who were sentenced to have it all suspended or most of it. He noted a case in Great Falls where a man injured a woman. The man was off for a suspended sentence before the woman was even out of the hospital. STEWART noted in the Independent-Record of November 20 there was an article of a cocaine dealer who was sentenced ten years, suspended nine years and with good behavior would probably spend only six months in jail.

REP KEEDY moved to amend page 1, line 18 to clarify that "imposition" includes "suspension".

REP IVERSON seconded that motion.

The motion was carried unanimously and given to Jim Lear to draft the necessary revisions.

REP KEEDY moved to amend page 4 lines 4 and 5 to rearrange the sentence structure for clarity.

REP IVERSON seconded that motion.

The motion was carried unanimously and was given to Jim Lear for the necessary revisions.

CHAIRMAN EUDAILLY requested Jim Lear to draft the adopted amendments to House Bill 6 for the executive committee to consider.

HOUSE BILL 9. The hearing on House Bill 9 raised the question of the usage of the word "walls" in pertaining to confinement areas of the prison. It was stated there are no "walls" surrounding any of the prison areas, It was decided that other language would be necessary to insert in place of "walls" to show confinement areas.

CURT CHISHOLM, Deputy Director of Department of Institutions, and DAN RUSSELL, Administrator of Division of Corrections, were asked what terminology could be used in place of "walls." They stated, the term, "perimeter security fence" could be used in reference to the maximum security areas. However, there are some areas that are not seciruty areas that need to be defined.

REP IVERSON moved that the committee delay action on House Bill 9 until the correct language to be used is supplied to Jim Lear by Mr. Chisholm and Mr. Russell.

REP KEEDY seconded that motion.

The motion was carried unaimously, and the amendments were given to Jim Lear for revisions.

HOUSE BILL 12. REP KEEDY noted that this bill is covered by House Bill 10, if House Bill 10 is passed. REP KEEDY moved that the committee hold off action on this bill until a later date.

REP IVERSON seconded this motion.

The motion was carried unanimously.

HOUSE BILL 20. REP KEEDY observed that this bill is coverd by House Bill 10, if passed. REP KEEDY moved that the committee delay action on this bill until a later date.

REP IVERSON seconded that motion.

The motion was carried unanimously.

HOUSE BILL 99. REP KEEDY noted that this bill is covered by House Bill 10, if

REP MATSKO seconded that motion.

The Motion was carried unanimously.

HOUSE BILL 6. REP KEEDY moved to have the sub committee reconsider the previous action taken on House Bill 6.

REP IVERSON seconded that motion.

The following amendments were made to House Bill 6:

1. Page 1, line 17
   Following: "jurisdiction"
   Strike: "and"
   Insert: "or"

2. Page 1, line 18
   Following: "imposition"
   Insert: "of sentence, whether or not executed,"

3. Page 1, line 19
   Following: "state, the"
   Insert: "County Attorney or"

4. Page 4, line 3.
   Following: "disposition"
   Strike: "reviewed"

5. Page 4, line 4.
   Following: "defendant"
   Strike: "the prosecuting attorney, and"

6. Page 4, line 5.
   Following: "confined "
   Insert: ", and the prosecuting attorney"

REP KEEDY moved to Do Pass House Bill 6 as amended.

REP MATSKO seconded that motion.

The motion was carried unanimously.

HOUSE BILL 8. REP MATSKO moved Do Pass House Bill 8 as amended to include House Bill4.

REP IVERSON seconded that motion.

HOUSE BILLS 12, 20, 99. REP IVERSON moved to place House Bills 12, 20, 99 in a holding pattern in committee until further action is taken on House Bill 10.

REP KEEDY seconded that motion.

HOUSE BILL 10. House Bill 10 was discussed and amended at great lengths. The amended portions of this bill are in Exhibit 4 of sub committee report.

No further action has been taken on House Bill 10, until the sub committee considers

Exhibit 1.

REPORT OF THE SUB COMMITTEE/JUDICIARY COMMITTEE
HOUSE BILLS 4, 5, 6, 8, 9, 10, 12, 20, 99, 110
January 15, 1981

The sub committee met on January 13, 14, and 15 to make recommendations on the sentencing bills. Those in attendance were REP EUDAILLY, CHAIRMAN, REP IVERSON, REP KEEDY, REP MATSKO and JIM LEAR, Legal Counsel. REP HUENNEKENS was excused from the meetings.

HOUSE BILL 4. The sub committee recommended to incorporate House Bill 4 with House Bill 8. See Exhibit 1.

HOUSE BILL 5. The sub committee recommended a Do Not Pass on House Bill 5, after extended discussion.

HOUSE BILL 6. The sub committee recommended a Do Pass on House Bill 6 as amended. See Exhibit 2.

HOUSE BILL 8. The sub committee recommended a Do Pass on House Bill 8 with the inclusion of House Bill 4. See Exhibit 1.

HOUSE BILL 9. The sub committee recommended a Do Pass on House Bill 9 as amended. See Exhibit 3.

HOUSE BILL 10. The sub committee recommended a Do Pass on House Bill 10 as amended. See Exhibit 4. There was no vote taken on this action. The sub committee recommends CHAIRMAN KEYSER place this bill on the House floor as soon as possible. There was no vote taken on this action.

HOUSE BILLS 12, 20, 99, 110. The sub committee recommends these bills be held in committee until further action is taken on House Bill 10. See Exhibit 5 for House Bill 110.

CHAIRMAN EUDAILLY

dl

REP. EUDAILY moved to amend line 20, page 2, inserting "except as provided in subsection (3)".

REP. KEEDY offered a substitute motion on page 3, line 11, following "viewed" insert "only".

REP. EUDAILY inquired if that amendment meant board members could not view the minutes. KEEDY stated that was not the intention of the amendment. The substitute motion passed with CHAIRMAN KEYSER, REP. MATSKO and REP. EUDAILY voting no.

Rep. EUDAILY withdrew his prior motion.

REP. ANDERSON moved House Bill 71 be tabled. The motion passed unanimously.

REP. YARDLEY requested that a draft be prepared with amendments inserted.

HOUSE BILL 8 The subcommittee's recommendations were passed out to committee members (EXHIBIT 1). REP. EUDAILY noted some of the language of House Bill 4 was incorporated into House Bill 8. The subcommittee recommends House Bill 4 be tabled. House Bill 8 was moved by EUDAILY do pass as amended. The vote was unanimous to do pass as amended.

REP. YARDLEY moved the statement of intent be part of the bill, noting the Interim Committee on Corrections Policy and Facility Needs wrote the statement. All were in favor of the statement of intent to be included with the bill.

HOUSE BILL 5 The subcommittee recommended do not pass. Discussion on House Bill 5 was decided to be held at a later executive session.

HOUSE BILL 6 REP. KEEDY explained the proposed amendments of the subcommittee. JIM LEAR told committee members they tried to clean up the language with the proposed amendments but it does not cover all the bases. REP. EUDAILY moved do pass as amended. The motion passed unanimously.

HOUSE BILL 9 REP. EUDAILY moved do pass as amended. REP. IVERSON noted when CURT CHISHOLM spoke to the subcommittee the "walls of the prison" were mentioned. Actually walls do not surround the entire prison facilities. This amendment was based on the description of the prison lands by the Department of Institutions. The motion of do pass as amended passed unanimously.

HOUSE BILLS 12, 20, 99 and 110 have been included in the rework of House Bill 10. It was moved by REP. EUDAILY that House Bills 12, 20, and 99 be tabled. If House Bill 10 did not pass the committee would have the option of reviving House Bills 12, 20 and 99. The motion passed unanimously.

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 5	2/18/81	3/06/81	3/21/81					3/21/81	
HB 6	1/22/81	3/09/81	3/14/81					3/14/81	
HB 8	1/22/81	3/09/81	3/24/81						3/24/81
HB 9	1/22/81	3/09/81	3/09/81					3/09/81	
HB 10	1/27/81	2/10/81	tabled						
HB 12	3/02/81	3/09/81	3/24/81				3/24/81		
HB 20	3/02/81	3/09/81	3/09/81				3/09/81		
HB 52	1/20/81	2/03/81	2/03/81					2/03/81	
HB 66	1/20/81	2/03/81	3/24/81				3/24/81		
HB 93	1/22/81	3/11/81	3/14/81						3/14/81
HB 96	2/07/81	3/11/81	3/14/81					3/14/81	
HB 99	3/02/81	3/13/81	3/14/81				3/14/81		
HB 110	1/23/81	3/12/81	3/14/81					3/14/81	
HB 138	2/18/81	3/03/81	3/03/81				3/03/81		
HB 138	3/04/81	3/21/81	3/21/81	tabled					
HB 153	1/23/81	3/03/81	3/03/81				3/03/81		

he said, an effort to convince an habitual offender that severe punishment awaits him. He added that this bill would not have a very large effect on prison population.

Curt Chisholm, Deputy Director of the Department of Institutions, said that the "persistent felony offender" designation is not used nearly as often by judges as records would indicate it could be, and supported the bill.

Karen Mikota, representing the League of Women Voters, spoke in opposition because the bill does not make a distinction as to when felonies increase from five to ten years. She said that HB 207 deals with the definition of "convicted", and asked that this committee hold off deciding on this bill until the hearing of HB 207.

Senator S. Brown asked Mr. Chisholm why there had been only eight "persistent felony offender" designations made by the courts. Mike Meloy offered the information that in the six years he has been involved in practice under Judge Bennett not a single county attorney has asked for this designation. Mr. Chisholm said that the allowance for this designation was passed in 1975, and then in 1977 the "dangerous" (as opposed to "non-dangerous") designation was made available -- and this latter designation has proven more popular with county attorneys.

Senator Olson asked why the maximum sentence was fixed at one hundred years, and Rep. Gould said that the language was taken from the persistent felon law.

CONSIDERATION OF HOUSE BILL 20:

TO PROVIDE THAT ADDITIONAL SENTENCES FOR CRIMES COMMITTED WITH A DANGEROUS WEAPON ARE TO RUN CONSECUTIVELY TO THE SENTENCE PROVIDED FOR THE OFFENSE.

Rep. Gould presented the bill as an attempt to spell out the language more clearly than it is in the 1977 law. There were no proponents or opponents.

CONSIDERATION OF HOUSE BILL 9:

TO MAKE THE LAW RELATING TO GOOD TIME ALLOWANCE MORE RESTRICTIVE.

Rep. Yardley, District 74, presented the bill and said that it is not connected with HB 10. He said that he felt some of the "good time" programs designated were biased against some religions. He felt that it was ludicrous to have good time accrue while a prisoner is on probation.

to correct a major problem in the sentencing process, not to increase the time served by convicts so much as to have sentences handed out that are more consistent with the time which will actually be served.

DISPOSITION OF HOUSE BILL 20:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 405:

Senator Mazurek moved to amend page 5, line 11, following "when", by inserting "it appears"; and following "applicant" by striking "alleges" and inserting "has suffered or may suffer". His motion passed unanimously. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 9:

Senator S. Brown moved that the bill be amended on page 2, line 13, by inserting the stricken language of subsection (f), and relettering it "(e)". His motion passed unanimously. He then moved that the bill BE CONCURRED IN AS AMENDED, and his motion also passed unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 403:

Senator Halligan moved that the bill be amended according to Rep. Keedy's proposed amendment on page 1, line 18, following "46-14-201", by inserting "or raises the issue of his fitness to proceed,". His motion passed unanimously. Senator Mazurek moved to amend page 2, line 14, by inserting "or his counsel" following "defendant". The motion passed over Senator Crippen's objection. Senator Crippen felt that the obligation of the prosecutor and the judge to the defendant should include their duty to raise the question of the defendant's mental competence.

Mike Anderson
Chairman, Judiciary Committee

STANDING COMMITTEE REPORT

March 9, 19 31

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 20

GOULD (BROWN)

Respectfully report as follows: That HOUSE Bill No. 20

~~DO PASS~~
BE CONCURRED IN

Mike Anderson
Chairman.

STATE PUB. CO
Helena, Mont.